

REMARKS

In response to the Office Action dated October 31, 2002, a drawing correction is proposed for FIG. 2(a) to label signal lines 9a and 9b. A separate paper requesting approval is submitted concurrently herewith. Claims 1-17 are pending in this application.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 102

Claims 1-7 are rejected under 35 U.S.C. § 102(e) as being anticipated by Matsuo et. al. (hereinafter, Matsuo).

The rejections are respectfully traversed.

As a first issue, the Examiner states that the changes to 35 U.S.C. § 102 (e) by the American Inventors Protection Act of 1999 (AIPA) do **not** apply to the examination of the present application as the application being examined was not filed on or after November 29, 2000. However, the present application was filed on September 28, 2001. Accordingly, the change made to 35 U.S.C. § 102(e) should apply to the present application.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention such that the identically claimed invention is placed into possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.* 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). However, there is a significant difference between the claimed invention and the arrangement disclosed by Matsuo that scotches the factual determination that Matsuo identically describe the invention recited in claim 1.

More specifically, claim 1 requires *a first detector that detects amplitudes of the displacement members and the phase difference therebetween*. No such detector is disclosed in Matsuo. In Matsuo patent, a velocity sensor 56 senses a rotation velocity of the rotor 40 and outputs the sensed result to a phase difference controller 51 and an amplitude controller 53. The phase difference controller 51 calculates the most suitable phase difference between two driving signals respectively applied to the first and second piezoelectric devices 10 and 10' based upon the rotation velocity. Similarly, the amplitude controller 53 calculates the most suitable amplitude of two driving signals respectively applied to the first and second piezoelectric devices 10 and 10' based upon the rotation velocity (See lines 34 to 54 of column 14 and Fig. 16 of Matsuo). However, Matsuo does not disclose anything about a *detector that detects amplitudes of the displacement members and the phase difference therebetween*, as recited in claim 1."

The above described difference between the apparatus recited in claim 1 and the apparatus of Matsuo undermines the factual determination that Matsuo identically describes the claimed inventions within the meaning of 35 U.S.C. § 102. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).

Applicants, therefore, submit that the imposed rejection of claims 1-7 under 35 U.S.C. § 102 for lack of novelty as evidenced by Matsuo is not factually or legally viable. Hence, withdrawal of the rejection of claims 1-7 under 35 U.S.C. § 102 as well as the allowance of claims 1-7 are respectfully solicited.

CLAIMS 8-17

The Examiner notes on Form PTO-326 that claims 1-17 are pending in this application. However, the Office Action rejects only claims 1-7. Consequently, Applicants presume that claims 8-17 are not rejected, and would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. However, as claims 8-17 ultimately depend from claim 1 and claim 1 is patentable over Matsuo, claims 8-17 are patentable over Matsuo also, and their allowance is respectfully solicited.

CONCLUSION

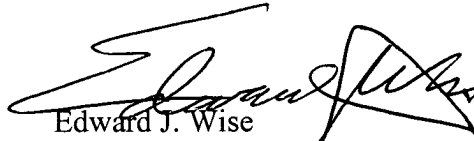
Accordingly, it is urged that the application, as now amended, is in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

09/964,846

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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